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1947. **File No.** Reciprocity II/47

Legal **DEPARTMENT**

B **BRANCH**

Subject:— Rules and Notifications under the Reciprocity (South Africa) Act 1944

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SECURITY CLASSIFIED.
10/5/56.

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16.5.56

Legal Department.
7396 dated 21/6/1947.

Submitted with reference to H. & L.G.D. note at pages 7-8 ante.

2. The question for the consideration of the R.L.A. is whether in view of the provisions of rule 3 of the Reciprocity(south Africa) (Local Franchise) Rules, 1944, it is necessary for the Provincial Government to undertake a legislation to amend the City of Bombay Municipal Act, 1888, so as to disqualify South Africans (i.e. persons not being ofIndian origin, who are domiciled ~~anywhere~~ anywhere in the Union of South Africa else where than in Cape Province) being enrolled in the Municipal election roll as a voter of any ward as suggested by the Bombay Corporation at pp - 3 ante.

3. It is not clear why the Bombay Municipal Corporation office considers a separate legislation is necessary. Rule 3 of the said rules provides that notwithstanding anything contained in any other law, no South African shall be eligible for election to any local authority or to vote in any such election, unless his name was entered on the electoral roll of such local authority immediately prior to the commencement of the said rules. In view of this clear provision it appearsthat no separate legislation by the Provl. Govt, is necessary. The view taken in the H. & L.G.D. note at pp.7-8 ante.is correct.

sd/-
27/8/47.

S. S.

The Reciprocity Act, 1943(IX of 1943) is a Central

made by the Central Govt. in virtue of entry 3 in the Federal Legislative List in the Seventh Schedule to the Govt. of India Act, 1935, namely "External Affairs etc." The Act extends to the whole of British India and has already come into force on the 1st day of September 1943. Rule 3 of the Reciprocity (South Africa) (Local Franchise) Rules, 1944, which are made under section 6 of the Act and other enabling provisions there of, provides that notwithstanding anything contained in any other law, no South African shall be eligible for election to any local authority or to vote in any such election unless his name was entered on the electoral roll of such local authority immediately prior to the commencement of these rules. The Reciprocity Rules in question came into force on the 1st December 1944. The expression "local authority" used in rule 3 will have the meaning given to that expression in section 3(28) of the General Clauses Act, 1897 and includes the Bombay Municipality. Even though the City of Bombay Municipal Act, 1888 (Bom. III of 1888) enables a South African to stand as a candidate or to be a voter at any municipal election, rule 3 of the said rules prevents him from doing so. The said Rule being made under the Central Act will prevail over the Provincial law namely the city of Bombay Municipal Act, 1888. The said rule however saves the said privileges of those South Africans whose names were on the electoral roll of the Bombay Municipality before the 1st December 1944.

2. The Provincial Govt. is not competent to make any law on the subject contained in entry 3 in List I. The legislation proposedby the Bombay Municipality being of international character, cannot be enacted by the Provincial Legislature.

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3. The view that the Provincial Govt. is competent to debar South Africans from voting at, or standing as a candidate to the municipal election in virtue of entry 13 in List II in the 7th Schedule to the Govt. of India Act, 1935, will result in invalidating the Reciprocity Act, 1943, as the Central Govt. is not competent to make a law falling in the provincial field. The proper view to take is that the central law is competent in virtue of entry 3 in List I and therefore the Provincial Govt. is not competent to make a similar law under different entry in the Provincial Legislative List.

4. The Central Govt. has made it clear that the enactment is of a retaliatory character and it is presumed that the moment the persons of Indian origin are free from any disability as regards franchise in any of the provisions of the Union of South Africa the counterpart provision in the Central Act will be cancelled in British India in respect of the relevant province.

sd/-
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P A

The Reciprocity Act, 1943 (Ix of 1943) extends to the whole of Britsish India and has come into force on 1.9.1943. Under section 3 of the said Act, the Central Govt. had directed (p. 5A) that the same disabilities re. local franchise to which persons of Indian origin are subject in the Provinces of the Union of South Africa excepting the Cape Province , shallbe imposed in British India on persons not being of Indian origin who are domiciled in the Provinces of the Union of South Africa excepting the Cape Province. Under rule 3 of the Reciprocity (south African) (Local Franchise) Rules, 1944

made under section 6 of the said Act and the above direction notwithstanding anything contained in any other law, no South African referred to in rule 2 of the said rules, shall be eligible for election to any local authority or to vote in any such election, unless his name was entered on the electoral roll of such local authority immediately prior to the commencement of the said rules on 1.12.1944. The Municipal Corporation of the City of Bombay is ~~a~~ local authority ~~xxx~~ within the meaning of the said rule 3, and, therefore, no South African shall be eligible for election thereto no r to vote in any such election, unless his name was entered ~~in~~ the municipal election roll under section 11(1) of the City of Bombay Municipal Act, 1888 (Bom.III of 1888) prior to 1.12.1944. It has been stated in para. 2 of the letter of the Mayor dated 26.4.1947 at p. 2 that on going through the electoral roll of the Bombay Municipality it hasbeen found that no name of any South African national of non-Indian origin hasbeen entered on such roll prior to the commencement of the Reciprocity (South Africa) (Local Franchise) Rules, 1944. Thus, no South African within the meaning of rule 2 of the said rules will be ~~xxx~~ eligible for election to the Municipal Corporation of the City of Bombay nor entitled to vote in any such election. Also, under section 100(1) of the Govt. of India Act, 1935 read with entry No. 3 in the Federal Legislative List I in the Seventh Schedule thereto, the Provincial Legislature is not athorised to legislate on municipal his entranchisement of South Africans, inspite of entry No. 13 in the Provincial Legislative List II. Accordingly the Bill proposed to be enacted by the Bombay Municipality at p. 5 is not expedient, nor will

it be within the competence of the Provincial Legislature to legislate.'

sd/29/9/47.

.....R.

It is true that the subject-matter of the proposed Bill at p. 5 falls under entry 13 in List II in the Seventh Schedule to the Government of India Act, 1935, and under sub-section (3) of section 100 of the said Act the Provincial Legislature has power to make laws for a Province or for any part thereof with respect to this entry. Sub-section (3), however, opens with the words "subject to the two preceding to sub-sections". One of the preceding sub-sections is sub-section(1) which says that the Dominion Legislature has, and the Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I. This power of the Dominion Legislature is, notwithstanding anything in the two next succeeding sub-sections, including sub-section (3) (opening words of sub-section (1)). In exercise of this power the Central Legislature had enacted Act IX of 1943 entitled the Reciprocity Act, 1943 (IX of 1943), under entry 3 " External affairs" in List I. Although, therefore, the Provincial Legislature is competent to enact any law on the subject of franchise to local authorities, a subject falling under local Government entry 13 in

M.Rackedam.
10/5- a/4.

List II, the power of the Provincial Legislature under sub-section (3) of section 100 being subject to sub-section (1) and the Central Legislature having enacted the Reciprocity Act under entry 3 in List I, the Provincial Legislature cannot enact any law on the subject contrary to any such enactment made by the Central Legislature. Since rule 3 of the Reciprocity (South Africa) (Local Franchise) Rules, 1944, made under section 6 of the Reciprocity Act permits South African, other than those of the Cape Province, enrolled in the electoral roll of a local authority immediately prior to the commencement ofthose Rules, namely 1st December 1944, to vote the proposed law at p.5 which debars all such South Africans, whether ~~xxxx~~ enrolled prior to that date or not from being eligible tobe enrolled in the municipal election rollgoes counter to rule 3 which permits such of them as have been enrolled prior to 1st December 1944, and as such will be out of order.

2. Since the Mayor has pointed out that it has been found that no name of any South African national of non-Indian origin was entered on the municipal election roll prior to the commencement of the said Rules, the question is purely of academic interest and the proposed Bill is not necessary.

sd/-
27/9.

D S, Office. Pl. put up the Gazette containing the Reciprocity Rules.
sd/-
26/9

Rules. Resubmitted with the Gazette containing the Reciprocity
sd/-
30/9/47.

Madhav Raokadam. 10/5. c/4.

The view taken in the Health & L. G. Deptt. Office note (p) & (8) is correct. The papers may be passed on to that Deptt. with an endorsement as under

" Seen & passed on to Health and L.G. Deptt."

sd/-
1/10-

R. S. A.

sd/- P.N.L.
1/10

Madhav Raokadam.

10/5

c/4.

Office of the R.L.A.

Seen and passed on to the Health and Local Government Department.

sd/- P.M.L.

Remembrancer of Legal Affairs.

U. R. to H. & L. G. D. No. 9729, dated the 6th October 1947.

Madhav Rajkadam.
10/5/56.

c/4.